IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4613 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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S D CHAUHAN - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR DC DAVE for Petitioner(s) : 1,
MR SP HASURKAR, AGP. for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 01/07/2006

ORAL JUDGMENT

1 This petition challenges the order dated 8/1/1998 (Exhibit-D) whereunder departmental inquiry is ordered to be initiated against the petitioner and disciplinary proceedings are ordered to be initiated against the petitioner under the provisions of The Gujarat Civil Services (Discipline & Appeals) Rules, 1971 read with The Gujarat Civil Services (Conduct) Rules, 1971.

2 The petitioner was serving with the respondent – State of Gujarat and retired as Deputy Collector on 30/6/1993. On 20/6/1997 the petitioner was served with a notice/memorandum whereunder various charges have been framed against the petitioner and the petitioner is called upon to tender his explanation. The charges are in relation to various orders, eight in all, made by the petitioner between 22/6/1993 and 29/6/1993 during his tenure as Deputy Collector, Kheda between 10/4/1989 to 30/6/1993.

3 The learned Advocate for the petitioner has challenged the impugned order initiating departmental inquiry on the ground that the proceedings have been initiated : (i) beyond the statutory period of limitation prescribed under Rule 189A of the Bombay Civil Service Rules,1959; (ii) the proceedings have been instituted without the sanction of the Governor; (iii) the appointment of Inquiry Officer is also without the sanction of the Governor. In this context he has heavily relied on the provisions of the Rule 189A of the BCS Rules and the following decisions :

(1) AIR 1998 SC 1833 - State of Andhra Pradesh Vs. Radhakishan.

(2) 1984 G.L.H. 309 – K.B.Desai Vs. The State of Gujarat & Ors.

(3) AIR 1978 SC 1109 – B.J.Shelat Vs. State of Gujarat & Ors.

The learned Advocate has also submitted that on merits the charge, on the face of it, would go to show that the entire proceedings have been initiated without application of mind and in total disregard of the record.

4 In so far as the contention regarding initiation of proceedings after prior sanction of the Governor is concerned, the communication dated 20/6/1997 (Exh.8) itself goes to show that the same is ordered and in the name of the Governor of Gujarat. Same is the position in relation to the impugned order appointing the Inquiry Officer which has been challenged in the present petition. The learned Advocate for the petitioner has not been able to show, in the circumstances, how there is violation of the condition stipulated in clause (b) of the Proviso to Rule 189A of BCS Rules.

5 So far as the plea regarding limitation is concerned it is necessary to note that Rule 189A of the BCS Rules requires that Governor has a right of withholding or withdrawing a pension or any part thereof whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss which may have been caused to the Government, if in a departmental or judicial proceeding the pensioner is found guilty of grave misconduct or negligence

during the period of his service. In case of a pensioner who has already retired from service three exceptions are carved out by clause (b) of the Proviso to Rule 189A of BCS Rules and sub-clause (ii) of clause (b) of the Proviso states that if the departmental proceeding is not instituted while the Government servant was in service, the same shall not be initiated in respect of any event which took place more than 4 years before such institution.

6 The contention on behalf of the petitioner that the proceedings have been initiated for the period between 10.4.1989 to 30.6.1993 and therefore, on the date viz. 20.6.1997 when the proceedings were initiated by issuance of show cause notice the period of four years having elapsed the proceedings are required to be struck down as being beyond the statutory period of limitation does not merit acceptance for the simple reason that the preamble of the notice merely records the tenure during which the petitioner was holding the post of Deputy Collector in the district of Kheda. The events for which the petitioner has been called upon to show cause and chargesheeted that are, as noticed here-in-before, between 22.6.1993 to 29.6.1993 and are therefore within the period of 4 years, which is the statutory period of limitation for initiation of proceedings. In these circumstances, the challenge on the ground of limitation cannot be accepted.

7 Though the learned Advocate made elaborate submissions in relation to the merits of the charges, apart from the fact that the inquiry is yet to be proceeded with, entering into any discussion on merits of the matter wherein disputed questions of fact are

involved and evidence is required to be led, cannot form the domain of jurisdiction of the High Court under Article 226 of the Constitution. Therefore, on this limited count this contention does not merit acceptance.

8 Even otherwise, when the inquiry is pending, it would not be in the fitness of thing to enter into validity or otherwise of the charges framed against the delinquent-petitioner for the simple reason that the Court is not in a position to record opinion one way or the other and any expression of opinion might result in prejudice to one or the otherside.

9 In the circumstances, for the reasons stated hereinbefore the petition does not merit acceptance and is rejected accordingly. Rule discharged with no order as to costs.

(D.A.MEHTA, J.)

m.m.bhatt